

TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations

**(Continuation of California Notice Register 2002, No. 9-Z,
and Meetings of February 9, 2002 and March 8, 2002.)**

NOTE: The Fish and Game Commission is exercising its powers under Section 202 of the Fish and Game Code as the following changes to the proposed regulations may not be available to the public for the full public comment period prior to adoption. See the text of this notice—changes are shown in **bold** type.)

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 215, 220, 240 and 315 of the Fish and Game Code and to implement, interpret or make specific sections 200, 205, 206 and 215 of said Code, proposes to amend subsections (b)(91.1), (b)(176) and (b)(195) of Section 7.50, Title 14, California Code of Regulations, re: Klamath River Sport Fishing regulations.

Updated Informative Digest/Policy Statement Overview

Hook Size Change for Anadromous Waters of the Klamath River System: Current regulations in subsection (b)(91.1)(A)2. define hook size requirements for the Klamath River system above the Highway 101 bridge. These requirements allow the use of any single hook having a gap between the point and shank that is between ½ and 1 inch; or, any multiple hook having a gap between the point and shank that is between ¼ and ½ inch. This requirement was designed to reduce the incidental catch and mortality of juvenile steelhead trout and coho salmon. Also, area closures currently exist that are designed to protect these fish during the peak juvenile downstream migrations (April/May). For additional protection and in the interest of consistency, the Department is proposing a maximum single hook size with a gap no greater than 5/8 inch and a maximum multiple hook size with a gap no greater than ½ inch.

General Area Closures within 400 feet of any Seining Operation: Current regulations in subsection (b)(91.1)(B)1. prohibit any fishing within 400 feet of any U.S. Fish and Wildlife Service or Department of Fish and Game (Department) seining operation. The Department no longer conducts seining operations and, therefore, is proposing to eliminate this restriction.

Additional Closures to Protect Anadromous Fish

1. Date change for the fishing closures on the Klamath River from Coon Creek Falls to 3,500 feet below Iron Gate Dam: Current regulations in subsection (b)(91.1) allow anglers to catch and keep any salmon regardless of size from December 1 through July 31. The remainder of the year, August 1 through November 30 chinook salmon take is regulated by a Klamath Basin

impact quota. The current regulations do not provide protection for adult spring chinook during their April through July spawning migration. The Department, therefore, is proposing to eliminate the take of adult spring run chinook salmon above Coon Creek Falls to a point 3,500 feet below Iron Gate Dam from April 1 through July 31. This closure would provide protection for naturally produced spring run chinook salmon in the Klamath River and still provide anglers with the opportunity to harvest the hatchery component of the spring run in the lower Klamath River below the falls at Coon Creek.

2. Date change for the fishing closure for the Shasta River: Current regulations allow anglers to fish from the fourth Saturday in May through Feb. 28 in the Shasta River main stem from Interstate 5 to 250 feet above the Department's fish counting weir. This area supports a moderate steelhead fishery from mid November through February. The Department, however, recognizes that additional protection is warranted during that period for adult fall run chinook. The Department, therefore, is proposing that the current closure on the Shasta River main stem from Interstate 5 to 250 feet above the Department's fish counting weir be expanded to include the period September 1 through November 15.

3. Date change for the fishing closure from Trinity River main stem from Hawkins Bar Bridge (Road to Denny) downstream to the mouth of the Trinity: Current regulations allow anglers to fish all year in the Trinity River main stem downstream from the mouth of the South Fork Trinity. The Trinity River upstream from its confluence with the South Fork Trinity is closed to all fishing from April 1 through the Friday preceding the fourth Saturday in May. The closure should be extended to include the Trinity River from Hawkins Bar Bridge (Road to Denny) downstream to the confluence with the Klamath River. This addition would close the entire Trinity River downstream from the Old Lewiston Bridge from April 1 through the Friday preceding the fourth Saturday in May. This closure would provide an additional 30 miles of protection to juvenile coho salmon and steelhead and to wild adult spring-run chinook salmon migrating up river to spawn.

Quota Adjustment: Under current regulations in subsection (b)(91.1)(C), the allowable chinook salmon harvest in the Klamath River system is based on spawning run size predictions and spawning escapement goals. The harvest and the distribution of the catch are regulated by seasons, daily and weekly bag and possession limits, and area quotas and allocations. Salmonids from the Klamath River basin are managed through a cooperative system of state, federal, and tribal management agencies. Regulations developed through this system are designed to meet natural and hatchery escapement needs for these stocks, while providing equitable harvest opportunities to ocean (sport and commercial) and river (sport and tribal) users. The Pacific Fishery Management Council (PFMC) is responsible for adopting recommendations for the management of sport and commercial ocean fisheries in the fishery management zone

(three to 200 miles offshore) off the coasts of Washington, Oregon, and California. When approved by the Secretary of Commerce, these recommendations are implemented as ocean fishing regulations by the National Marine Fisheries Service. The Department and the Commission adopt regulations for state waters (inside three miles) that are consistent with federal regulations.

Annual adjustment of the quota is necessary to meet natural and hatchery escapement needs for Klamath River fall-run chinook salmon stocks, while providing equitable harvest opportunities for ocean (sport and commercial) and river (sport and tribal) users. The total river system recreational harvest of fall chinook salmon is currently regulated by a quota. In 2001, the share, or impact quota, for the Klamath River basin allowable sport catch was 29,800 adult fish (39 percent of the total allowable harvest by non-tribal fisheries, including ocean commercial, ocean recreational and recreational river fisheries).

Projections of the abundance of adult Klamath River fall-run chinook salmon in the 2002 season are not yet available from the PFMFC. However, preliminary examination of data available to Department staff suggests that the predicted 2002 adult salmon run will be less than the 2001 run. Consequently, the Department is suggesting that the Commission consider a 2002 quota for the river recreational fishery lower than that of last year, and for notice requirements, within a range lower than the 2001 quota (1,200-25,000 adult salmon). The Commission also will consider modifying the share of the allowable catch allocated to the river recreational fishery (which was 39 percent in 2001). As in prior years, the river recreational fishing quota would be split evenly between fisheries above and below Coon Creek Falls.

Consistency with Reference to Coon Creek Falls: The current regulations in subsection (b)(91.1)(C)1.b. read “Klamath River Below Coon Creek Falls: No salmon over 22 inches may be retained after 50% of the basin impact quota has been taken below Coon Creek”. For clarification and consistency, the Department is proposing to add the word “falls” in the second reference to the area below Coon Creek.

Restrictions to Fishing when Iron Gate Hatchery and Trinity River Hatchery Meet Spawning Escapement Goals: Current regulations in subsection (b)(91.1)(C)1.c.ii. and subsection (b)(91.1)(C)1.d. allow anglers to harvest adult chinook salmon after quota attainment from 3,500 feet below Iron Gate Dam to Coon Creek Falls once the Department determines that the adult fall chinook salmon spawning escapement at Iron Gate Hatchery exceeds 8,000 adult fish. Trinity River anglers can harvest adult chinook after the quota is met between Old Lewiston Bridge and the mouth once escapement at Trinity River Hatchery exceeds 4,800 adult fish. The Department is recommending the open areas be restricted from a point beginning 3,500 feet below Iron Gate Dam to the Interstate 5 bridge on the Klamath River and from Old Lewiston Bridge to the mouth of Indian Creek on the Trinity River.

Closures to Modify Allocations: In previous years, the Department established three sub-quota areas above the falls at Coon Creek. The sub-quota areas were established to equitably distribute the catch of adult chinook above Coon Creek Falls. When the Initial Statement of Reasons was prepared the Department had not committed to monitoring the harvest in each sub-quota area. Therefore, the Department recommended closures to modify allocations for the upper Klamath and Trinity rivers. The seasonal closures were designed to maximize fishing opportunities while maintaining the 50% basin impact quota for adult chinook above Coon Creek Falls. The Department has since committed to monitor the fishery in each sub-quota area during the season to ensure anglers have full utilization of the fishery.

1. Allowable Fishing Season from Coon Creek Falls to 3,500 feet below Iron Gate Dam: The Department is no longer recommending that fishing for adult chinook salmon be restricted to 28 days beginning when 50% of the basin impact quota has been taken below the falls at Coon Creek.

2. Allowable Fishing season from Old Lewiston Bridge to the Highway 299 West Bridge at Cedar Flat: The Department is no longer recommending that fishing for adult chinook salmon be restricted from September 9 through September 17 and from October 8 through November 30.

3. Allowable Fishing Season from Hawkins Bar Bridge (Road to Denny) downstream to the mouth of the Trinity: The Department is no longer recommending that fishing for adult chinook salmon be restricted from September 9 through September 30 and from October 29 through November 30.

Modify the closure at the mouth of the Klamath River: The Department has developed a mathematical model designed to project what percentage of the sport quota anglers will take, and not take, before the spawning run ends. In 2001, the Department implemented the model on an experimental basis. The results indicate that the model was accurate to within 300 fish of the Department's final season harvest estimate.

Current regulations allow anglers to fish within 100 feet of the mouth of the Klamath River until 15% of the total basin impact quota for adult fall chinook has been harvested below the Highway 101 bridge. This regulation was adopted in 2001 to help regulate the harvest and to equitably distribute the quota among lower Klamath River sport anglers. In 2001, 15% of the quota was reached, prompting the Department to close the area near the mouth of the Klamath River to all fishing. Final season harvest estimates showed sport anglers harvested less than half of their 29,800 fish quota. Therefore, the Department is recommending that the restriction at the mouth of the Klamath River not be

implemented if the Department projects that sport angler harvest will not meet the total basin impact quota. _____

Reduction in Daily Bag Limit, Weekly Bag Limit, and Possession Limit: Based on early season forecasts, the Department recommended reducing the daily, weekly, and possession limits for adult chinook salmon. New information on the distribution and abundance of pacific salmon was recently presented to the Department. The findings indicate an increase in the number of adult chinook returning to the Klamath River basin than was previously forecast. Since the number of chinook salmon is higher than previously expected, a reduction of daily, weekly, and possession limits is no longer warranted.

1. **Reduction in Daily Bag Limit:** The Department is no longer recommending that the daily bag limit be reduced from 3 king salmon, but no more than two over 22 inches to 2 king salmon, but no more than one over 22 inches.

2. **Reduction in Weekly Bag Limit:** The Department is no longer recommending that the weekly bag limit be reduced from six chinook salmon over 22 inches retained in any seven consecutive days to four chinook salmon over 22 inches retained in any seven consecutive days.

3. **Reduction in Possession Limit:** The Department is no longer recommending that the possession limit be reduced from 12 chinook salmon, of which no more than six may be over 22 inches to 8 chinook salmon, of which no more than 4 may be over 22 inches.

Date Change for the Fishing Closure in the South Fork Trinity River Downstream from the Mouth of Grouse Creek: Current regulations in subsection (b)(91.1)(F)7.g. allow anglers to fish the South Fork Trinity River downstream from the mouth of Grouse Creek from the Saturday preceding Memorial Day through March 31. The Department is recommending that the season opening date be changed to the fourth Saturday in May to be consistent with the opening date for other sections in the Trinity River Basin.

Minor editorial changes are also being made for clarification to correct cross references in subsections 7.50(b)(176) and (b)(195).

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the City Council Chambers, 333 West Ocean Boulevard, Long Beach, CA, on Friday, April 5, 2002, at 8:30 a.m., or as soon thereafter as the matter may be heard.

No oral comments will be accepted by the Commission after its hearing on April 5, 2002. Written comments may be submitted at the address given below, or by

fax at (916) 653-5040, or by e-mail to jduffy@dfg.ca.gov, but they must be received no later than 5:00 p.m. on Monday, April 15, 2002. E-mail comments must include the true name and mailing address of the commentor.

NOTICE IS FURTHER GIVEN that proposed regulations will be considered for adoption at a teleconference hearing to be held at the Resources Building, Room 1320, 1416 Ninth Street, Sacramento, CA, on Thursday, April 25, 2002, at 10 a.m. The meeting will be audible to the public from the Commission office and the interested public is encouraged to attend at this location.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John M. Duffy, Assistant Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to John M. Duffy or Kathy Maxwell

at the preceding address or phone number. Neil Manji, Fisheries Programs Branch, Department of Fish and Game, phone (530) 225-2306, has been designated to respond to questions on the substance of the proposed regulations. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.dfg.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The preservation of Klamath River salmon stocks is necessary for the success of lower and upper Klamath River businesses which provide goods and services related to fishing. The proposed changes are necessary for the continued preservation of the resource and therefore the prevention of adverse economic impacts.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.

- (c) Cost Impacts on a Representative Private Person or Business:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal funding to the State: None.

- (e) Nondiscretionary Costs/Savings to Local Agencies: None.

- (f) Programs Mandated on Local Agencies or School Districts: None.

- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.

- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the

Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Date: March 26, 2002

John M. Duffy
Assistant Executive Director